

PART 6301—BOARD OF CONTRACT APPEALS

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AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.*).

SOURCE: 52 FR 48630, Dec. 23, 1987, unless otherwise noted.

6301.0 Foreword.

A Department of Transportation Board of Contract Appeals has been established pursuant to Pub. L. 95-563. The Secretary appoints the members of the Board and designates the Chair and Vice-Chair of the Board.

6301.1 Scope of part.

(a) *Scope.* This part prescribes the functions and procedures of the Department of Transportation Board of Contract Appeals and provides for the appointment of a Chair, a Vice-Chair, and Members of the Board, and sets forth their duties.

(b) *Definitions.* For the purposes of this part—

Administrative Judge means a member of the Board selected and appointed to serve pursuant to the Contract Disputes Act of 1978;

Appellant means the contractor who appeals;

Board means the Department of Transportation Board of Contract Appeals;

Contracting officer means the Government's contracting officer whose decision is appealed, or the successor contracting officer;

Parties means the appellant and the contracting officer, and

Secretary means the Secretary of Transportation.

6301.2 Qualifications of members.

Each member of the Board must be a qualified attorney who is admitted to practice before the highest court of a State or the District of Columbia.

Members of the Board are selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code, with the additional requirement that each member shall have had not fewer than five years experience in public contract law.

6301.3 Jurisdiction and authority of the Board and its members.

(a) The Board hears and decides:

(1) Appeals from decisions made by contracting officers relating to contracts of the Department of Transportation and its constituent administrations;

(2) Appeals from decisions of contracting officers relating to contracts of any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal;

(3) Matters within jurisdiction of the Board in accordance with the provisions of the Contract Disputes Act, 41 U.S.C. 600 *et seq.*; and

(4) Other matters as directed by the Secretary which are not inconsistent with statutory duties.

In each case, the Board shall make a final decision which is impartial, fair, and just to the parties and is supported by the record of the case and the law. The Administrative Judge assigned to hear an appeal has authority to act for the Board in all matters with respect to such appeal. Included in such authority is the authority to sign subpoenas and the power to authorize the Recorder of the Board to issue subpoenas pursuant to section 11 of the Contract Disputes Act of 1978. (41 U.S.C. 610)

(b) An Administrative Judge may not act for the Board or participate in a decision if that Judge has participated directly in any aspect of the award or administration of the contract involved.

(c) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three Administrative Judges of the Board. The decision of a majority of the panel shall constitute the decision of the Board.

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6301.4 Ex parte communications.

Ex parte communications, that is, written or oral communications with the Board by or for one party only without notice to the other, are not permitted. No member of the Board or of the Board's staff shall consider, nor shall any person directly or indirectly involved in an appeal submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

6301.5 Contract appeals procedures (general).

(a) It is the intent of these rules to provide for the just and inexpensive determination of appeals without unnecessary delay. It is the objective of the Board's preliminary procedures to encourage full disclosure of relevant and material facts, and to discourage surprise. Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. The Board may extend any time limitation for good cause and in accordance with legal precedent.

(b) Ordinarily, the appellant has the burden of proof.

(c) The rules of procedure at 6302 shall govern the procedures in all contract disputes appealed to the Board.

6301.6 Effective date.

This chapter shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and upon the contractor's election of Contract Disputes Act procedures, to appeals relating to earlier contracts with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

PART 6302—RULES OF PROCEDURE

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AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.*).

SOURCE: 52 FR 48631, Dec. 23, 1987, unless otherwise noted.

6302.1 How to appeal a contracting officer's decision (Rule 1).

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days